

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTONIO CASTANEDA,

Plaintiff(s),

v.

J. TIMOTHY FATTIG, et al.,

Defendant(s).

Case No. 2:22-cv-01868-APG-NJK

REPORT AND RECOMMENDATION¹

[Docket No. 6]

Pending before the Court is Plaintiff's application to proceed *in forma pauperis*. Docket No. 6.

Plaintiff's available funds exceed the full filing fee of \$402. *Id.* at 3. Therefore, Plaintiff does not qualify for *in forma pauperis* status and must pay the entire filing fee now. *See id.* (section (2)(a) providing that the full filing fee is due if the current account balance is \$402 or more and that the full filing fee amount must be paid before the case proceeds); *see also* 28 U.S.C. § 1915(a)(1) (a prisoner applying to proceed *in forma pauperis* must demonstrate "that the person is unable to pay such fees").²

¹ The Ninth Circuit has held that denial of a request to proceed *in forma pauperis* is a matter beyond a magistrate judge's authority, *Tripathi v. Rison*, 847 F.2d 548, 549 (9th Cir. 1988), so the undersigned issues this report and recommendation to the assigned district judge.

² Even were Plaintiff to qualify to proceed *in forma pauperis*, the full filing fee would need to be paid in installments over time. 28 U.S.C. § 1915(b).

1 Accordingly, the undersigned recommends that Plaintiff's application to proceed *in forma*
2 *pauperis* be **DENIED** and that Plaintiff be required to pay the full filing fee of \$402 before this
3 case proceeds further.³

4 Dated: January 6, 2023

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6 Nancy J. Koppe
United States Magistrate Judge

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8 **NOTICE**

9 This report and recommendation is submitted to the United States District Judge assigned
10 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and
11 recommendation must file a written objection supported by points and authorities within fourteen
12 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file
13 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951
14 F.2d 1153, 1157 (9th Cir. 1991).

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27 ³ Nothing herein should be construed as indicating that Plaintiff's case can proceed on its
28 merits once the filing fee has been paid. *See* 28 U.S.C. § 1915A (governing screening of prisoner
complaints against government entities, officers, or employees). The undersigned will address
screening at a later junction as appropriate.